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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL COOK,

Plaintiff,

vs.

CITY OF ONTARIO; CHUEN
TSANG; CODY WYRICK-SMITH;
BORIS ZEISSIG; WILLIAM
MLODZINSKI; PATRICK
WOOLWEAVER; and DOES 1 through
10, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES FOR:

1. Violation of Fourth Amendment Rights – Excessive Force;
2. Violation of Fourth / Fourteenth Amendment – Malicious Prosecution;
3. Violation of Fourth / Fourteenth Amendment – Deliberate Fabrication of Evidence;
4. Municipal Liability – Failure to Train and/or Discipline;
5. Municipal Liability – Unconstitutional Custom/Practice and/or Policy;

JURY TRIAL DEMANDED

COMES NOW Plaintiff Michael Cook and shows this honorable court the following:

COMPLAINT FOR DAMAGES

1 **JURISDICTIONAL ALLEGATIONS**

2 1. As this action is brought under 42 U.S.C. § 1983, this court has
3
4 jurisdiction over this case under its federal question jurisdiction pursuant to 28
5 U.S.C. § 1331.

6 2. As the incidents complained of in this action occurred in the County of
7
8 San Bernardino, State of California, within the territorial jurisdiction of this court,
9 venue properly lies in this court pursuant to 28 U.S.C. § 1391(b)(2).

10 **GENERAL ALLEGATIONS**

11 3. Plaintiff Michael Cook, hereinafter referred to as “COOK” or “Plaintiff
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13 COOK”, is a natural person, who, at all times complained of in this action, resided
14 in the County of Riverside, State of California.

15 4. Defendant City of Ontario, hereinafter also referred to as “CITY”, is a
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17 municipal entity located in the State of California; within the territorial jurisdiction
18 of this court.

19 5. Defendant Chuen Tsang, hereinafter also referred to as “TSANG”, is, and
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21 at all times complained of herein, was, a peace officer employed by the Ontario
22 Police Department, acting as an individual person under the color of state law, in
23 his individual capacity and was acting in the course of and within the scope of his
24 employment with defendant CITY.

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26 6. Defendant Cody Wyrick-Smith, hereinafter also referred to as “WYRICK-
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28 SMITH”, is, and at all times complained of herein, was, a peace officer employed

1 by the Ontario Police Department, acting as an individual person under the color of
2 state law, in his individual capacity and was acting in the course of and within the
3 scope of his employment with defendant CITY.
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5 7. Defendant Boris Zeissig, hereinafter also referred to as “ZEISSIG”, is,
6 and at all times complained of herein, was, a peace officer employed by the
7 Ontario Police Department, acting as an individual person under the color of state
8 law, in his individual capacity and was acting in the course of and within the scope
9 of his employment with defendant CITY.
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11 8. Defendant William Mlodzinski, hereinafter also referred to as
12 “MLODZINSKI”, is, and at all times complained of herein, was, a peace officer
13 employed by the Ontario Police Department, acting as an individual person under
14 the color of state law, in his individual capacity and was acting in the course of and
15 within the scope of his employment with defendant CITY.
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18 9. Defendant Patrick Woolweaver, hereinafter also referred to as
19 “WOOLWEAVER”, is, and at all times complained of herein, was, a peace officer
20 employed by the Ontario Police Department, acting as an individual person under
21 the color of state law, in his individual capacity and was acting in the course of and
22 within the scope of his employment with defendant CITY.
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25 10. Defendants DOES 1 through 6, inclusive, are sworn peace officers
26 and/or police officers and/or investigators and/or Special Officers and/or
27 dispatchers and/or some other public officer, public official or employee of
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1 defendant CITY and/or otherwise employed by the Ontario Police Department,
2 who in some way committed some or all of the tortious actions (and
3 unconstitutional violations) complained of in this action, and/or are otherwise
4 responsible for and liable to plaintiff for the acts complaint of in this action, whose
5 identities are, and remain, unknown to plaintiff, who will amend his complaint to
6 add and to show the actual names of said DOE defendants when ascertained by
7 plaintiff.
8
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10 11. At all times complained of herein, DOES 1 through 6, inclusive, were
11 acting as individual persons acting under the color of state law, pursuant to their
12 authority as sworn peace officers and/or police officers and/or Special Officers
13 and/or Supervisors (i.e. Sergeants, Lieutenants, Captains, Commanders, etc.)
14 and/or dispatchers, employed by the Ontario Police Department, and were acting in
15 the course of and within the scope of their employment with defendant CITY.
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18 12. Defendants DOES 7 through 10, inclusive, are sworn peace officers
19 and/or the Chief and/or Assistant Chiefs and/or Commanders and/or Captains
20 and/or Lieutenants and/or Sergeants and/or other Supervisory personnel and/or
21 police making and/or final police making officials, employed by Ontario Police
22 Department and/or defendant City of Ontario, who are in some substantial way
23 liable and responsible for, or otherwise proximately caused and/or contributed to
24 the occurrences complained of by plaintiff in this action, such as via supervisory
25 liability (i.e. failure to properly supervise, improperly directing subordinate
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1 officers, approving actions of subordinate officers), via bystander liability (failing
2 to intervene in and stop unlawful actions of their subordinates and/or other
3 officers), and such as by creating and/or causing the creation of and/or contributing
4 to the creation of the policies and/or practices and/or customs and/or usages of the
5 Ontario Police Department for, *inter alia*,: 1) for using excessive force upon
6 persons; 2) fabricating evidence; 3) covering up tortious conduct by Ontario Police
7 Department peace officers.
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10 13. At all times complained of herein, DOES 7 through 10, inclusive, were
11 acting as individual persons acting under the color of state law, pursuant to their
12 authority as the Chief and/or the Assistant Chief and/or Captains and/or
13 Lieutenants and/or Sergeants and/or other Supervisory personnel and/or policy
14 making and/or final policy making officials with the Ontario Police Department,
15 and/or some other public official(s) with defendant CITY, and were acting in the
16 course of and within the scope of their employment with defendant CITY.
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19 14. At all times complained of herein, defendants DOES 7 though 10,
20 inclusive, were acting as individual persons under the color of state law; under and
21 pursuant to their status and authority as peace officers and/or Supervisory peace
22 officers (as described herein, above and below), and/or policy making peace
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1 officers, with the Ontario Police Department and/or otherwise with defendant
2 CITY¹.

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4 15. Plaintiff is presently unaware of the identities of DOES 1 through 10,
5 inclusive, and will amend his complaint to add and to show the actual names of
6 said DOE defendants, when made known to plaintiff.

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8 16. In addition to the above and foregoing, Defendants TSANG, WYRICK-
9 SMITH, ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1 through 6,
10 inclusive, acted pursuant to a conspiracy, agreement and understanding and
11 common plan and scheme to deprive Plaintiff of his federal Constitutional and
12 statutory rights, and California constitutional and statutory state law rights, as
13 complained of in this action.

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15 17. Defendants TSANG, WYRICK-SMITH, ZEISSIG, MLODZINSKI,
16 WOOLWEAVER and DOES 1 through 6, inclusive, acted in joint and concerted
17 action to so deprive the plaintiff of those rights as complained of herein; all in
18 violation of 42 U.S.C. § 1983, and otherwise in violation of United States
19 (Constitutional and statutory) law and California (Constitutional and statutory)
20 state law.

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22
23 18. Said conspiracy / agreement / understanding / plan / scheme / joint action
24 / concerted action, above-referenced, was a proximate cause of the violation of the
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28 ¹ Such as a City executive officer.

1 plaintiff's federal and state constitutional and statutory rights, as complained of
2 herein.

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4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF 42 U.S.C. § 1983**
6 **Violation of Fourth Amendment Rights –**
7 **Excessive/Unreasonable Use of Force on Person**
8 **(Against Defendants TSANG, WYRICK-SMITH, ZEISSIG, MLODZINSKI,**
9 **WOOLWEAVER and DOES 1 through 6, inclusive)**

10 19. Plaintiff hereby reallege and incorporate by reference the allegations set
11 fourth in paragraphs 1 through 18, inclusive, above, as if set forth in full herein.

12 20. On July 21, 2022, COOK and his then girlfriend got into a verbal
13 argument. Following the argument, COOK's girlfriend left COOK's home in
14 Riverside, California and went to her home in Ontario, California.

15 21. Throughout the evening of July 21, 2022 and during the early hours of
16 July 22, 2022, COOK's girlfriend repeatedly called his cell phone but he did not
17 answer her calls.

18 22. During the morning hours of July 22, 2022, COOK called his
19 girlfriend back and a man answered her phone. Unbeknownst to COOK, the man
20 who answered the phone was Ontario Police Department Officer TSANG.

21 23. TSANG immediately began antagonizing COOK and challenged
22 COOK to a fight. TSANG did not identify himself as a police officer.

23 24. After several minutes of being verbally antagonized and threatened by
24 TSANG, Plaintiff got in his truck and drove to his girlfriend's home in Ontario,
25 California.

1 25. When COOK arrived at his girlfriend's house, he exited his truck and
2 was immediately confronted by TSANG.

3 26. TSANG had his gun pointed at COOK and began screaming at COOK
4 to "get on the ground."

5 27. COOK had no idea what was going on and said, "For what? I didn't
6 do anything."

7 28. Several Ontario Police Department officers then arrived on scene,
8 including WYRICK-SMITH, ZEISSIG, MLODZINSKI, WOOLWEAVER and
9 DOES 1 through 6, inclusive, and had their guns drawn and pointed at COOK.
10

11 29. COOK was then tackled from behind by WYRICK-SMITH and
12 DOES 1 through 6, inclusive, and taken to the ground.

13 30. While on the ground, WYRICK-SMITH and DOES 1 through 6,
14 inclusive, used deadly force against COOK by attempting to place COOK in a
15 carotid hold.
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17 31. As WYRICK-SMITH was attempting to place COOK in a carotid
18 hold, TSANG, ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1 through
19 6, inclusive, then began repeatedly beating COOK with their batons as well as
20 kicking, stomping and punching COOK.
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22 32. TSANG, WYRICK-SMITH, ZEISSIG, MLODZINSKI,
23 WOOLWEAVER and DOES 1 through 6, inclusive, beat COOK so severely that
24 COOK lost consciousness and defecated himself.
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1 33. COOK was then arrested and taken to the hospital where he was
2 diagnosed with a number of injuries, including a broken leg.

3 34. TSANG, WYRICK-SMITH, ZEISSIG, MLODZINSKI,
4 WOOLWEAVER and DOES 1 through 6, inclusive, then authored bogus police
5 reports in an effort to induce the San Bernardino County District Attorney's Office
6 to prosecute COOK for violating Penal Code sec. 69.
7

8 35. After reviewing the defendants' fabricated reports, and in reliance
9 upon the fabricated reports, the San Bernardino County District Attorney's Office
10 filed criminal charges against COOK, including a felony charge of violating Penal
11 Code sec. 69.
12

13 36. The charge was ultimately dismissed in the interest of justice.
14

15 37. As mentioned above and in addition to the above and foregoing, when
16 COOK was physically harmed by Defendants TSANG, WYRICK-SMITH,
17 ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1 through 6, inclusive.
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19 38. The actions of Defendants TSANG, WYRICK-SMITH, ZEISSIG,
20 MLODZINSKI, WOOLWEAVER and DOES 1 through 6, inclusive, as
21 complained above herein, constituted a violation of COOK's rights under the
22 Fourth Amendment to the United States Constitution to be free from the use of
23 unlawful and unreasonable and excessive force upon his person.
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25 39. As a direct and proximate result of the actions of Defendants TSANG,
26 WYRICK-SMITH, ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1
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1 through 6, inclusive, as complained of herein, COOK: 1) was substantially
2 physically, mentally and emotionally injured; 2) incurred medical and
3 psychological costs, bills and expenses and 3) incurred other special and general
4 damages and expenses in an amount to be proven at trial which is in excess of
5 \$3,000,000.00.
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8 40. The actions by said defendants were committed maliciously,
9 oppressively and in reckless disregard of COOK's constitutional rights, sufficient
10 for an award of punitive / exemplary damages against all defendants and each of
11 them, save for Defendant CITY, in an amount to be proven at trial which is in
12 excess of \$2,000,000.00.
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14 **SECOND CAUSE OF ACTION**
15 **MALICIOUS PROSECUTION**
16 **VIOLATION OF 42 U.S.C. § 1983**

17 **Violation of Fourth and Fourteenth Amendment Right**
18 **(Against Defendants TSANG, WYRICK-SMITH, ZEISSIG, MLODZINSKI**
19 **and DOES 1 through 6, inclusive)**

20 41. Plaintiff hereby realleges and incorporates by reference the allegations
21 set forth in paragraphs 1 through 40, inclusive, above, as if set forth in full herein.

22 42. As shown above, Defendants TSANG, WYRICK-SMITH, ZEISSIG,
23 MLODZINSKI, and DOES 1 through 6, inclusive, used excessive force upon
24 COOK and intentionally included false information in their reports to induce the
25 San Bernardino County District Attorney's Office to prosecute COOK.
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1 43. Also as shown above, Defendants TSANG, WYRICK-SMITH,
2 ZEISSIG, MLODZINSKI, and DOES 1 through 6, inclusive, knew that plaintiff
3 COOK had not committed a violation of Penal Code § 69, and, nonetheless,
4 authored bogus police reports and accused plaintiff COOK of various acts in an
5 effort to justify their unlawful conduct.
6

7 44. Said police reports authored by Defendants TSANG, WYRICK-SMITH,
8 ZEISSIG, MLODZINSKI, and DOES 1 through 6, inclusive, also contained
9 material misrepresentations of facts, including that COOK was walking towards
10 his vehicle to obtain a weapon; alleging that COOK said he was going to “box”
11 TSANG; alleging that COOK took an “aggressive fighting stance”; alleging
12 COOK was getting ready to “fight with officers”; alleging that COOK resisted
13 arrested; alleging COOK attempted to “take Officer Wyrick-Smith down to the
14 ground by grabbing Officer Wyrick-Smith’s legs”; alleging COOK was
15 “concealing his left arm”; alleging that they observed COOK “cock his right leg
16 back in an attempt to kick Officer Zeissig”; alleging that COOK had fled from the
17 scene; alleging that COOK pulled away from officers; alleging COOK was balling
18 his fists; alleging that COOK was fighting with officers; alleging that COOK was
19 attempting to place his arms under his chest; alleging that COOK was attempting
20 to pull his arms apart while the officers were handcuffing him; alleging that COOK
21 was attempting to grab onto to officers’ legs and tackle officers; alleging that
22 COOK refused to put his hands behind his back; and alleging that COOK “spun”
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1 into the officers; all of which was not true, upon which the San Bernardino County
2 District Attorney's Office relied, in large part, in deciding to file and to maintain
3 the criminal prosecution of plaintiff COOK.
4

5 45. Moreover, said criminal action against COOK was dismissed by the San
6 Bernardino County District Attorney's Office, in the interest of justice.
7

8 46. Moreover, said criminal action was procured by said defendants with
9 malice.

10 47. Moreover, as California does not provide for any remedy for an
11 aggrieved malicious prosecution victim to sue a public employee for the filing
12 and/or procurement of a bogus criminal action, pursuant to *Parratt v. Taylor*, 451
13 U.S. 527 (1981), the actions of said defendants constituted a violation of the
14 Fourth, Ninth, and Fourteenth Amendments to the United States Constitution.
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17 48. As a direct and proximate result of the actions Defendants TSANG,
18 WYRICK-SMITH, ZEISSIG, MLODZINSKI and DOES 1 through 6, inclusive, as
19 complained of herein, COOK: 1) was substantially physically, mentally and
20 emotionally injured; 2) incurred medical and psychological costs, bills and
21 expenses and 3) incurred other special and general damages and expenses in an
22 amount to be proven at trial which is in excess of \$3,000,000.00.
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25 49. The actions by said defendants were committed maliciously,
26 oppressively and in reckless disregard of COOK's constitutional rights, sufficient
27 for an award of punitive / exemplary damages against all defendants and each of
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1 them, save for Defendant CITY, in an amount to be proven at trial which is in
2 excess of \$2,000,000.00.

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4 **THIRD CAUSE OF ACTION**
5 **VIOLATION OF 42 U.S.C. § 1983**
6 **Violation of Fourteenth Amendment Rights –**
7 **Deliberate Fabrication of Evidence**
8 **(Against Defendants TSANG, WYRICK-SMITH, ZEISSIG, MLODZINSKI**
9 **and DOES 1 through 6, inclusive)**

10 50. Plaintiff hereby realleges and incorporates by reference the allegations
11 set forth in paragraphs 1 through 49, inclusive, above, as if set forth in full herein.

12 51. Defendants TSANG, WYRICK-SMITH, ZEISSIG, MLODZINSKI, and
13 DOES 1 through 6, inclusive, deliberately fabricated evidence that was used to
14 criminally charge and prosecute COOK.

15 52. The reports authored by Defendants TSANG, WYRICK-SMITH,
16 ZEISSIG, MLODZINSKI, and DOES 1 through 6, inclusive, are littered with
17 intentional material misrepresentations. These misrepresentations include stating
18 that COOK was walking towards his vehicle to obtain a weapon; alleging that
19 COOK said he was going to “box” TSANG; alleging that COOK took an
20 “aggressive fighting stance”; alleging COOK was getting ready to “fight with
21 officers”; alleging that COOK resisted arrested; alleging COOK attempted to “take
22 Officer Wyrick-Smith down to the ground by grabbing Officer Wyrick-Smith’s
23 legs”; alleging COOK was “concealing his left arm”; alleging that they observed
24 COOK “cock his right leg back in an attempt to kick Officer Zeissig”; alleging that
25 COOK had fled from the scene; alleging that COOK pulled away from officers;

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COMPLAINT FOR DAMAGES

1 alleging COOK was balling his fists; alleging that COOK was fighting with
2 officers; alleging that COOK was attempting to place his arms under his chest;
3 alleging that COOK was attempting to pull his arms apart while the officers were
4 handcuffing him; alleging that COOK was attempting to grab onto to officers' legs
5 and tackle officers; alleging that COOK refused to put his hands behind his back;
6 and alleging that COOK "spun" into the officers;
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9 53. These reports were ultimately submitted to the San Bernardino County
10 District Attorney's Office and relied upon during the prosecution of COOK.
11

12 54. All of the allegations listed above from the defendants' reports are not
13 true and defendants knew these statements were not true.
14

15 55. Defendants knew that they were misrepresenting the facts of this
16 incident and were deliberately indifferent to the fact that their misrepresentations
17 were relied upon during the prosecution of COOK.
18

19 56. The actions of Defendants TSANG, WYRICK-SMITH, ZEISSIG,
20 MLODZINSKI, and DOES 1 through 6, inclusive, as complained of herein,
21 constituted a violation of COOK's rights under the Fourteenth Amendment to the
22 United States Constitution.
23

24 57. As a direct and proximate result of the actions of Defendants TSANG,
25 WYRICK-SMITH, ZEISSIG, MLODZINSKI, and DOES 1 through 6, inclusive,
26 as complained of herein, COOK: 1) was substantially physically, mentally and
27 emotionally injured; 2) incurred medical and psychological costs, bills and
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1 expenses and 3) incurred other special and general damages and expenses in an
2 amount to be proven at trial which is in excess of \$3,000,000.00.

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4 58. The actions by said defendants were committed maliciously,
5 oppressively and in reckless disregard of COOK's constitutional rights, sufficient
6 for an award of punitive / exemplary damages against all defendants and each of
7 them, save for Defendant CITY, in an amount to be proven at trial which is in
8 excess of \$2,000,000.00.
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10 **FOURTH CAUSE OF ACTION**
11 **VIOLATION OF 42 U.S.C. § 1983**
12 **FEDERAL CLAIM FOR FAILURE TO PROPERLY TRAIN AND FOR**
13 **FAILURE TO PROPERLY HIRE / FIRE / DISCIPLINE**
14 **(Against CITY)**

15 59. Plaintiff hereby realleges and incorporates by reference the allegations
16 set forth in paragraphs 1 through 58, inclusive, above, as if set forth in full herein.

17 60. As complained of herein above, the acts of Defendants TSANG,
18 WYRICK-SMITH, ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1
19 through 6, inclusive, deprived COOK of his rights under the laws of the United
20 States and The United States Constitution.
21

22 61. The training policies of CITY were not adequate to train its peace officer
23 employees to properly and lawfully handle situations similar to the one they were
24 presented with when they confronted COOK, including knowing what conduct
25 rises to the level of a violation of Penal Code § 69; and when reasonable force may
26 be used against a person.
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28

1 62. CITY was deliberately indifferent to the obvious consequences of its
2 failure to train its peace officer employees adequately.

3
4 63. The failure of CITY to provide adequate training caused the deprivation
5 of Plaintiff's rights by Defendants TSANG, WYRICK-SMITH, ZEISSIG,
6 MLODZINSKI, WOOLWEAVER and DOES 1 through 6, inclusive.

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8 64. CITY's failure to train is closely related to the deprivation of Plaintiff's
9 rights as to be the moving force that ultimately caused Plaintiff COOK's injuries.

10 65. As a direct and proximate result of the actions of Defendants TSANG,
11 WYRICK-SMITH, ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1
12 through 6, inclusive, as complained of herein, COOK: 1) was substantially
13 physically, mentally and emotionally injured; 2) incurred medical and
14 psychological costs, bills and expenses and 3) incurred other special and general
15 damages and expenses in an amount to be proven at trial which is in excess of
16 \$3,000,000.00.
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20 **FIFTH CAUSE OF ACTION**
21 **[VIOLATION OF 42 U.S.C. § 1983]**

22 **Claim Against Local Governing Body Defendants Based On Official Policy,**
23 **Practice, or Custom**
24 **(Against CITY)**

25 66. Plaintiff hereby realleges and incorporates by reference the allegations
26 set forth in paragraphs 1 through 65, inclusive, above, as if set forth in full herein.

27 67. As shown above, the actions of Defendants TSANG, WYRICK-SMITH,
28 ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1 through 6, inclusive,

1 deprived COOK of his particular rights under the United States Constitution, as
2 described above.

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4 68. At all times complained of herein, Defendants TSANG, WYRICK-
5 SMITH, ZEISSIG, MLODZINSKI, WOOLWEAVER and DOES 1 through 6,
6 inclusive, were acting pursuant to the policies, customs, usages, and practices of
7 the Ontario Police Department / Defendant CITY: 1) using excessive force; 2)
8 maliciously prosecuting persons; and 3) for covering up unlawful and tortious
9 conduct by Ontario Police Department personnel and were a proximate cause of
10 the very same federal constitutional violations complained of by the plaintiff in this
11 action.
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13
14 69. Said actions of said defendants were done by them under the color of
15 state law.
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17 70. As a proximate result of said defendants acting pursuant to said policies,
18 customs, usages, and practices of defendant CITY, above-described, said
19 defendants committed said actions complained of above.
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21 71. As a direct and proximate result of the actions of Defendants, as
22 complained of herein, COOK: 1) was substantially physically, mentally and
23 emotionally injured; 2) incurred medical and psychological costs, bills and
24 expenses and 3) incurred other special and general damages and expenses in an
25 amount to be proven at trial which is in excess of \$3,000,000.00.
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27
28 **WHEREFORE**, Plaintiff prays for judgment as follows:

COMPLAINT FOR DAMAGES

1 a) For a judgment against all defendants for compensatory damages in an
2 amount in excess of \$3,000,000.00;

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4 b) For a judgment against all defendants, save defendant CITY, for punitive
5 damages in an amount in excess of \$2,000,000.00;

6 c) For an award of reasonable attorney's fees and costs;

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8 d) For a trial by jury; and

9 e) For such other and further relief as this honorable court deems just and
10 equitable.

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12
13 /s/ Gregory Peacock
14 GREGORY PEACOCK
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